



Reviewed By:	
Legal	<input type="checkbox"/>
Finance	<input type="checkbox"/>
Engineer	<input type="checkbox"/>
City Administrator	<input checked="" type="checkbox"/>
Human Resources	<input type="checkbox"/>
Community Development	<input type="checkbox"/>
Police	<input type="checkbox"/>
Public Works	<input type="checkbox"/>
Parks and Recreation	<input type="checkbox"/>

Agenda Item Number

Business - A

Tracking Number

Agenda Item Summary Memo

Title: Resolution Approving the Issuance of a Non-Recourse Promissory Note - DSBSP

Meeting and Date: Special City Council – May 19, 2020

Synopsis: Please see attached.

Council Action Previously Taken:

Date of Action: _____ Action Taken: _____

Item Number: _____

Type of Vote Required: Majority

Council Action Requested: Approval

Submitted by: Bart Olson Administration
Name Department

Agenda Item Notes:

Lisa Pickering

From: Bart Olson
Sent: Tuesday, May 19, 2020 2:10 PM
To: Bart Olson
Cc: John Purcell; kfo@kfoassoc.com; Erin Willrett; James Jensen; Eric Dhuse; Rob Fredrickson; Tim Evans; Krysti Barksdale-Noble; Lisa Pickering
Subject: RE: Supplemental City Council packet #2 - Promissory note
Attachments: Promissory Note Yorkville FINAL 5192020 with highlights of new section.docx; RLF Recapture Strategy 12-03 (003).pdf

Importance: High

Hello all (elected officials blindcopied),

The Kendall County Board met this morning, and approved a promissory note in the form that is attached to this email. The only change to this document from the one that was in the special City Council meeting packet on Thursday is a new section on the County's revolving loan fund recapture strategy. I have highlighted the section in this attachment for your ease of use; again, this highlighted section is the only addition or change to the loan document from what was originally sent to you on Friday.

The highlighted section generally says that our use of the County's funds for the downstate grant will comply with the County's strategies on the use of revolving loan funds. The County's revolving loan strategy document is also attached to this email. Attorney Orr has reviewed the change to the loan document and the recapture strategy and has opined that our use of the downstate funds will be in line with County's strategy document. In parallel, I also have discussed the matter with County Administrator Scott Koeppel, who has relayed that the State's Attorney Office (SAO) has opined that our use of the funds for the downstate grants should be acceptable too. While there is language within the agreement related to job creation and low-to-moderate income individuals, both Attorney Orr and the SAO (secondhand to me) have said that the benefit could be in jobs and/or the simple availability of goods and services provided by the business.

Finally, to recap the risk of the City under the downstate grant program, both with the first round 18 applications for \$430,000+ approved at the May 12th City Council meeting, and the second round 8 applications for \$200,000 to be considered at the May 26th City Council meeting:

- 1) The total amount of grants or grants in waiting is ~\$630,000. The loan document from the County is \$400,000.
 - a. In a most realistic scenario - both Lynn and I have confirmed that the State has received many grant applications from around the state, and we both think that only a handful of Yorkville businesses will receive downstate grant funds. The actual grant program simply requires the funds to be used for working capital, which includes, salaries, rent, and all of the other things mentioned in the public hearing on May 12, and stay open for 60 days after receipt of grant funds. We are guessing 4 or 5 businesses will get the grant, which means only \$125,000 worth of grants against \$400,000 in County backstop. We don't think any businesses will default, as the requirements are relatively low. In this scenario, even if all 4 of 5 businesses default, the City would use the County loan to pay the state, and the County would decide whether they want to pursue recovery of funds from the businesses.
 - b. In an extreme scenario - all 26 first and second round Yorkville businesses receive a grant, and all 26 businesses default. At that point, the City would pay the state \$400,000 from the County loans, and the County would decide whether they want to pursue recovery of funds from \$400,000 worth of business grants. Also, the City would be on the hook for sending ~\$230,000 to the state and then deciding whether we want to pursue recovery of funds from the businesses.

- c. Additional procedural risk for any scenario – the City did ask for the language related to the Kendall County revolving loan fund recapture strategy to be struck from early forms of the promissory note agreement because we felt it was unclear and maybe was in opposition to use of the funds for the downstate grant. A committee of the County Board initially agreed with the City’s request, only to be advised by the State’s Attorney Office that the language needs to be included in order to meet various codes and policies, and that our use of the funds for this purpose should be acceptable. In an extremely unlikely scenario where the County Board or the State’s Attorney Office change their interpretation of the revolving loan fund document, the City could be at risk for the amount of funds in the County loan.

This email and the attachments will be distributed in a second supplemental special City Council packet very shortly, and I will walk everyone through this email and its attachments at tonight’s meeting.

Thanks,

Bart Olson
City Administrator
United City of Yorkville
630-553-8537 direct
630-553-4350 City Hall
630-308-0582 cell
bolson@yorkville.il.us
City of Yorkville 2.0: [Facebook](#), [Twitter](#), and [YouTube](#)

From: Bart Olson
Sent: Monday, May 18, 2020 5:50 PM
To: Bart Olson <BOlson@yorkville.il.us>
Cc: John Purcell <jpurcell@yorkville.il.us>; kfo@kfoassoc.com; Erin Willrett <ewillrett@yorkville.il.us>; James Jensen <JJensen@yorkville.il.us>; Eric Dhuse <edhuse@yorkville.il.us>; Rob Fredrickson <rfredrickson@yorkville.il.us>; Tim Evans <tevans@yorkville.il.us>; Krysti Barksdale-Noble <knoble@yorkville.il.us>
Subject: Supplemental City Council packet - letter to Governor

Hello all (elected officials blindcopied),

Here is the draft letter to the Governor up for consideration at tomorrow night’s Special City Council meeting. The attached letter will be sent out in a supplemental City Council packet shortly.

Thanks,

Bart Olson
City Administrator
United City of Yorkville
630-553-8537 direct
630-553-4350 City Hall
630-308-0582 cell
bolson@yorkville.il.us
City of Yorkville 2.0: [Facebook](#), [Twitter](#), and [YouTube](#)

Exhibit A

PROMISSORY NOTE FOR YORKVILLE, ILLINOIS, TO BORROW \$400,000 FROM THE KENDALL COUNTY REVOLVING LOAN FUND TO SECURE EMERGENCY WORKING CAPITAL GRANT FUNDING, UNDER THE DOWNSTATE SMALL BUSINESS STABILIZATION PROGRAM, FOR LOCAL BUSINESSES FACING HARDSHIP DUE TO THE COVID-19 PANDEMIC

Yorkville, Illinois, (“Borrower”) will borrow a total amount of \$400,000 (“Loan Amount”) from the Kendall County Revolving Loan Fund, held and managed by Kendall County, Illinois, (“Lender”) for the sole purpose of repaying Downstate Small Business Stabilization Program (“DSBSP”) Grant Funds to the State of Illinois (“State”). This loan is subject to the following terms and conditions contained in this Promissory Note (“Note”):

1. **INCORPORATION:** Kendall County Resolution 20-__ and the recitals set forth therein are incorporated as if fully set forth herein.
2. **HOLDING OF LOAN AMOUNT:** Within 7 calendar days of receiving the Loan Amount, Borrower shall place the Loan Amount in a separate, interest-bearing account with an FDIC-insured commercial banking institution. No other funds shall be placed in the account holding the Loan Amount, and the Loan Amount shall not be intermingled with any others funds owned, controlled, or distributed by Borrower. All interest that accrues on the Loan Amount shall be paid to the Lender; Borrower shall not use said interest to repay DSBSP grant funds to the State or for any other purpose.
3. **PROMISE TO PAY:** In return for receiving the Loan Amount, Borrower agrees to the following repayment terms:
 - 3.1 ***Early Repayment of Unused Amount:*** Within 30 calendar days of, (1) receiving notice that the State will not be distributing any additional funds under the DSBSP or (2) Borrower’s determination that it will no longer seek additional grant funds on behalf of Benefitting Businesses, whichever is sooner, Borrower shall notify Lender of same and must return any portion of the Loan Amount, in addition to any interest accrued thereon, which exceeds the total amount of grant funding secured by the Borrower on behalf of Benefitting Businesses.
 - 3.2 ***Repayment Due Date:*** The Borrower shall return the full remaining Loan Amount, in addition to any interest accrued, less any amount paid to the State under the DSBSP, to Lender within 30 calendar days of the last day the State can assert its right to have the DSBSP grant funding repaid by Borrower (“Repayment Due Date”).
 - 3.3 ***Recovery of Amounts Paid to State:*** If Lender is unable, after reasonable efforts, to recover any portion of the Loan Amount paid to the State on behalf of a Benefitting Business (“DSBSP Repayment”) from that Benefitting Business on whose behalf that payment was made to the State, Borrower shall not be required to reimburse Lender for the DSBSP Repayment. Lender need not pursue collection efforts against a Benefitting Business that is dissolved,

Exhibit A

insolvent, in receivership, or the subject of proceeding under Title 11 of the United States Code.

4. **METHOD OF PAYMENT:** All payments shall be sent to Lender in accordance with the Notice provision of this Note.
5. **PREPAYMENT:** Borrower has the right to repay the Loan Amount, or any portion thereof, at any time prior to the Repayment Due Date, without charge or penalty, except that Lender is entitled to any interest amount accrued at the time of prepayment.
6. **INTEREST:** Borrower shall not be required to pay interest on the Loan Amount, beyond any interest incidentally accrued, until the Repayment Due Date has passed. After that date, Borrower will be required to pay interest at a rate of 0.25% per year on any amount not returned to Lender.
7. **LIMITED USE:** Borrower may use the Loan Amount for the sole purpose of paying to the State any 2020 DSBSP grant funds the State demands be repaid as a result of a Benefitting Business's failure to comply with the conditions of the DSBSP. Borrower is prohibited from using any of the Loan Amount for any purpose other than repayment of any 2020 DSBSP grant funds the State demands be repaid to the State as result of a Benefitting Business failing to comply with the conditions of the DSBSP. Further, Borrower shall only use the Loan Amount in relation to Benefitting Business within Kendall County. Any contract, note, obligation, loan, or other appropriation to utilize the Loan Amount for any other purpose is and shall be void. Any attempt by Borrower to use any of the Loan Amount for any purpose beyond repayment of any 2020 DSBSP grant funds to the State shall be a default under this Note and shall entitle Lender to demand the immediate return of the entire Loan Amount from Borrower.
8. **COMPLIANCE WITH RECAPTURE STRATEGY:** This distribution of the Loan Amount to Borrower is subject to the 2006 Kendall County RF Recapture Strategy ("Recapture Strategy") and must comply therewith. The Recapture Strategy is incorporated as if fully set forth herein.
 - 8.1 ***Forgoing Procedural Requirements:*** Pursuant to the Illinois Emergency Management Agency Act, 20 ILCS 3305/10(j), and in the interest of obtaining emergency funding for Benefitting Businesses as quickly as possible, the procedural requirements set forth in Section C(1) of the Recapture Strategy are suspended for the purposes of processing this loan.
 - 8.2 ***Mandatory Substantive Provisions:*** To ensure compliance with the substantive provisions of the Recapture Strategy, Borrower will ensure the Benefitting Businesses use the grant funding in a manner that satisfies all other requirements of the Recapture Strategy, including, but not limited to the following: (1) the grant funds must be used for working capital, including salaries, and (2) jobs created or retained with the grant funding must benefit 51% low- to moderate-income individuals.

Exhibit A

9. RECORD KEEPING AND REPORTING:

- 9.1 ***Notice of DSBSP Grant Funds Obtained:*** Within 7 calendar days of obtaining DSBSP grant funds on behalf of a Benefitting Business, Borrower shall provide Lender a copy of the Participation Agreement with the Benefitting Business, and documentation identifying the last date upon which the State can seek return of the DSBSP grant funds.
- 9.2 ***Quarterly Reporting:*** Borrower shall provide quarterly reports to Lender which must include, (1) a complete account statement for the Loan Amount, showing interest earned and any transactions, (2) an updated list of all Benefitting Businesses that have received DSBSP grant funds through Borrower, including the last date upon which the State can seek return of the DSBSP grant funds for each Benefitting Business, and (3) a list of any DSBSP Repayments made to the State, identifying the Benefitting Business on behalf of which it was paid.
- 9.3 ***Notice of Demand from State:*** Within 7 calendar days of receiving notice from the State that it is seeking return of any DSBSP grant funds, Borrower must forward a copy of that notice to Lender.

10. PURSUIT OF DSBSP REPAYMENT FROM BENEFITING BUSINESS:

- 10.1 ***Assignment of Rights:*** Borrower must include language in all Participation Agreements with Benefitting Businesses preserving its authority to assign its rights under the Participation Agreement to Lender. By executing this Note, Borrower assigns to Lender Borrower's rights under all of Borrower's Participation Agreements with Benefitting Businesses located within Kendall County to recover any amounts, including any DSBSP Repayment paid to the State, from the Benefitting Business in default under the Participation Agreement, attorney fees and court costs.
- 10.2 ***Assist in Recovery of DSBSP Repayment:*** Borrower must take all necessary and appropriate action to assist Lender in recovering the DSBSP Repayment from the Benefitting Businesses. This includes all actions permitted by law and as set forth in the DSBSP and the Participation Agreements with the Benefitting Businesses. Any amount recovered from the Benefitting Businesses shall be retained by the Lender.
11. **DEFAULT:** If Borrower defaults by failing to comply with the terms of this Note, Lender may, to the extent permitted by law, demand immediate return of the full Loan Amount, including interest accrued thereon, or pursue any other lawful remedies.
12. **REMEDIES:** In any action with respect to this Note, the parties are free to pursue any legal remedies at law or in equity. If Lender is required to take legal action to enforce performance of any of the terms, provisions, covenants and conditions of this Note, including payment of the Loan Amount, Lender shall be entitled to reasonable attorneys' fees, court costs, expenses and expert witness fees incurred by Lender

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this Note duly authorized by all necessary and appropriate governmental action to execute this Note.

Yorkville, Illinois, hereby accepts and agrees to the terms and conditions set forth herein, and this Promissory Note is approved and adopted this ___ day of _____, 2020.

United City of Yorkville, Illinois:

Attest:

Mayor

City Clerk

COUNTY OF KENDALL
REVOLVING LOAN PROGRAM
RECAPTURE STRATEGY

Kendall County
Economic Development Commission
111 West Fox Street
Yorkville, IL 60560
Phone: 630.553.4142

Office of County Administrator

Revised: December, 2003

KENDALL COUNTY RLF RECAPTURE STRATEGY

A. Revolving Loan Fund Goals and Objectives

1. Stimulate economic growth in the County of Kendall, Illinois, by assisting with the retention and growth of the existing industrial and commercial base, providing needed equity to new start-up businesses, encouraging the development of minority and female owned businesses and providing an incentive for established businesses to relocate to the County of Kendall.
2. Assist new or existing Kendall County businesses to create and retain jobs.
3. Ensure that jobs are created or retained by business applicants benefit a minimum of 51% low-to-moderate income persons in the area.
4. Increase the County of Kendall property tax and sales base.
5. Provide businesses with the opportunity to expand.
6. Encourage and leverage loans to businesses by area private financial institutions.

B. Revolving Loan Fund Strategy

1. Eligible use of funds.
 - a. Site development/infrastructure extension costs.
 - b. Construction of new facility or additions.
 - c. Renovation of existing facilities.
 - d. Leasehold improvements.
 - e. Purchase of new or used machinery or equipment.
 - f. Working Capital
 - g. For every \$15,000 of revolving loan funds provided, one full time equivalent (FTE) job should be created or retained. (FTE jobs are positions consisting of a minimum of 1,950 hours worked per year). Kendall County participation will not exceed 30% or \$500,000, whichever is less, subject to availability of funds.

- h. Projects of a speculative nature are ineligible for funding.
2. The geographic area served by the fund will be within the boundaries of the County of Kendall.
 3. The funds will be targeted to assist existing industrial and commercial base, start up businesses, female and minority owned firms and established businesses that will be relocated to Kendall County, Illinois, on a first come, first serve basis as the County of Kendall expects to receive more applicants than available funding will cover. Applications that demonstrate the greatest potential for job creation and meeting the goals and objectives of the fund will be given the highest priority.
 4. Applications will be generated by:
 - a. Sending RLF information to the County's existing businesses.
 - b. Including RLF information in the County's marketing package.
 - c. Provide information to municipal economic development commissions and area chamber of commerce associations to be included in their marketing information.
 - d. Staff participation in business related seminars, workshops or meetings held in the County.
 - e. Provide RLF information to local chapter of NAACP, Urban League and other organizations representing minority groups and offer to speak at meetings periodically.
 - f. Provide information to area women's associations and service organizations.
 - g. Publicize approved loan projects by sending news releases to area media and holding ribbon cuttings and ground breaking ceremonies to encourage media coverage.
 - h. Area lending institutions will be provided with information about the RLF and asked to inform potential borrowers of fund availability.

C. RLF Management Plan

1. The County of Kendall shall appoint Kendall County Board members to the Kendall County Economic Development Commission. As

needed the Business Loan Review Committee shall consist of the Kendall County Economic Development Commission, State's Attorney, County Economic Development Director, County Treasurer and an experienced area financial institution lender. The committee shall review all applications to the revolving loan fund after the County Economic Development Director and a local financial institution lender have packaged the application and it is referred to the Kendall County Economic Development Commission. The Commission will meet with the applicant, meet with the representative of the participating lending institution, visit the site if necessary, negotiate terms, length, and security of loans and ensure compliance with the RLF goals and objectives. A recommendation will be prepared for the County Board's review for approval or denial which will include a description of the project, project costs, and source of funds, security required, special conditions, and reasons for approval or denial. All other application information is kept confidential. The County Board will formally approve or deny the application.

2. The RLF will be staffed by the County's Economic Development Director, State's Attorney and County Treasurer.
3. The loan documents, including commitment agreements, liens, title policies, security recordings, transfer tax declarations, amortization schedules and security releases, shall be obtained and completed by the State's Attorney. The County Treasurer and Economic Development Director shall monitor repayments of the loan, job creation and/or retention reports required to be provided semi-annually until commitment is met, monitor other special conditions required by the loan and submit semi-annual reports on the status of the RLF to the Department of Commerce and Economic Opportunity.
4. Delinquent Loans: When an RLF payment becomes 10 days past due, the fund administrator will place a telephone call to the borrower and request payment. At 30 days past due the County will send a formal letter requesting payment. Should the payment become 45 days past due the matter will be turned over to the State's Attorney to pursue. All legal rights will be exercised by the county to reclaim funds. The County State's Attorney will be consulted during foreclosure and liquidation proceedings if events warrant.

D. Assurances

1. Not more than 10 percent of the annual revenue to the RLF will be used for administration of the RLF fund. Administrative expenses will be documented via receipts, bills, invoices, etc.

2. Assistance provided from the RLF will result in at least 51 percent benefit to low-to-moderate income persons and these benefits will be documented by utilizing Job Training Partnership Act (JTPA) service providers, Illinois Employment and Training Centers, Workforce Investment Boards or the employee certification forms found in the RLF handbook.
3. The County of Kendall agrees to report semi-annually on the status of the RLF to the Department of Commerce and Economic Opportunity.
4. Any changes to the recapture strategy will be submitted to the Department of Commerce and Economic Opportunity.
5. The grantee shall agree to pursue legal remedy to recover delinquent loans. Legal action shall include that authorized by federal and state law, including, but not limited to, efforts to collect and pursue the interests of the RLF through bankruptcy court.
6. A minimum leverage ration of \$1 non-CDAP funds to \$1 CDAP RLF funds must be obtained for each project. RLF funds may not comprise more than 50% of the financing for any project.
7. The grantee shall assure that environmental reviews will be completed for each project funded, as well as prevailing wages paid if applicable.